

STATE OF MICHIGAN
COURT OF APPEALS

MONICA L. BERGERON,

Plaintiff-Appellee,

v

VICTOR L. BERGERON,

Defendant-Appellant.

UNPUBLISHED

April 16, 1999

No. 212680

Ogemaw Circuit Court

LC No. 95-900930 DM

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce awarding the parties joint legal and physical custody of their two minor sons.¹ We affirm.

Custody disputes are to be resolved in the child's best interests. To determine the best interests of the child, the trial court must consider and explicitly state its findings and conclusions with regard to each of the twelve factors set forth in § 3 of the Child Custody Act, MCL 722.23; MSA 25.312(3). In a custody case, we review the trial court's factual findings under the "great weight of the evidence" standard, its discretionary rulings for an abuse of discretion, and questions of law for clear legal error. *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998). The trial court's findings on each of the best-interests factors should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). On review, considerable deference is given to the superior vantage point of the trial court regarding issues of credibility and preferences under the statutory factors. *Thames v Thames*, 191 Mich App 299, 305; 477 NW2d 496 (1991).

Defendant first contends that the trial court erred in finding that factor d, the length of time the children had lived in a stable, satisfactory environment, slightly favored plaintiff. The court recognized that plaintiff had provided an unstable environment since the parties separated, but held defendant partially responsible because plaintiff had been escaping domestic violence and defendant had not paid child support. The trial court's conclusion that the boys' relationship with plaintiff was slightly more stable and satisfactory than their relationship with defendant is not against the great weight of the evidence. See *Fletcher*, *supra* at 878-879.

Defendant also claims that the trial court's evaluation of factor e was flawed because it did not factor in plaintiff's relationship with her boyfriend and pending drug charges against her. However, the trial court found that factor e favored defendant, and defendant has not adequately explained what relief he seeks with regard to this allegation of error.

Defendant next maintains that the trial court erred in finding that factor f favored neither party. Defendant contends that the court did not give proper consideration to evidence that plaintiff's boyfriend, Michael Emerson, has spent nights with her and that plaintiff had been arrested for manufacture and possession of marijuana. However, the Supreme Court has held that "questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*." *Fletcher, supra* at 887. There is no evidence that plaintiff's relationship with her boyfriend has had any detrimental effect on her sons. Moreover, the trial court properly weighed defendant's physical abuse and excessive disciplining of the children against plaintiff's drug charge and her relationship with Emerson. It was not against the great weight of the evidence for the court to conclude that factor f favored neither party.

Defendant further argues that the trial court erred in finding that factors g and l favored plaintiff because defendant had allowed the children to use heavy equipment around the farm, despite their tender ages. We disagree. The court's conclusion that defendant sometimes put his children in hazardous situations and treated them like hired hands is supported by the record. That plaintiff had been present on some of these occasions is not relevant to the trial court's findings on these factors, particularly as plaintiff expressed concern that the children were sometimes in danger on the farm.

Defendant next asserts that the trial court erred in finding that the parties were equal regarding factor j. We disagree. The evidence presented below indicates that the parties did not communicate well and that both plaintiff and defendant had been uncooperative on occasion. However, both parties testified that they recognized the importance of the children maintaining a relationship with the other parent. The trial court's conclusion that factor j favored neither party was not against the great weight of the evidence.

In addition, defendant argues that the trial court abused its discretion in awarding the parties joint physical custody but giving plaintiff a greater amount of time with the children. However, defendant cites no authority for the proposition that joint physical custody mandates an equal division of time between the parents. A party may not leave it to this Court to search for authority to sustain or reject its position. *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 95; 572 NW2d 246 (1997).

Finally, defendant argues that the trial court abused its discretion in awarding joint physical custody because the evidence showed that the parties cannot cooperate. Defendant relies on *Wellman v Wellman*, 203 Mich App 277; 512 NW2d 68 (1994); however, contrary to defendant's implication, *Wellman* does not stand for the proposition that joint physical custody is always inappropriate whenever there is evidence that the parents have some difficulty in cooperating.

After reviewing the record, we find no error requiring reversal. Defendant reported some frustration regarding the exercise of his visitation rights, but both he and his mother admitted that the

boys had frequently been at his house. Evidence was presented that some of the difficulties had been related to school bus policy and some were the result of defendant's general dissatisfaction with the amount of visitation time he had been granted. Plaintiff testified that the schedule had been working out satisfactorily, and the caseworker reported problems only with coordinating custody exchanges and with defendant's occasional delay in returning the children. Considering the record as a whole, we find no abuse of discretion in the trial court's decision to award the parties joint physical custody.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra

¹ Defendant has not appealed the trial court's ruling with regard to the parties' minor daughter, Bridget.